

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

GEORGIA SOUTHWESTERN RAILROAD,)
INC., a Corporation,)
Plaintiff,) CIVIL ACTION FILE
vs.) NO. 2:06CV3-B
AMERICUS C. MITCHELL, JR.,)
Defendant.)

Deposition of TERRY R. SMALL, taken by counsel for Defendant, pursuant to agreement, under the Federal Rules of Civil Procedure, and reported by Grace F. Lengmueller, RPR, held in the offices of Georgia Southwestern Railroad, Inc., 78 Pulpwood Road, Dawson, Georgia, on August 25th, 2006, commencing at 9:16 a.m.

ACCREDITED COURT REPORTERS
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1 MR. ALLRED: We're going to have
2 the usual stipulations with -- he and I
3 have agreed that this will be admissible
4 in an Alabama court since you're a
5 Georgia court reporter, and we've
6 already agreed to that prior to the
7 deposition.

8 TERRY R. SMALL,
9 having been produced and first duly sworn
10 as a witness, testified as follows:

11 EXAMINATION

12 BY MR. ALLRED:

13 Q Mr. Small, I'm Craig Allred here for Americus
14 Mitchell, the defendant in this case. I'm just going
15 to ask you a few questions here. If at any time you --
16 if I'm not clear on the question or you don't
17 understand the question, just let me know; I'll be glad
18 to repeat it for you. Or if you'd like to talk to
19 Adrian at any time, just let me know, and we can pause
20 for a minute, and y'all can go out in the hall.

21 Would you please state your name for us one
22 more time.

23 A Terry Ray Small.

24 Q Okay. And you're an employee of the Georgia
25 Southwest Railroad?

3

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FOR THE PLAINTIFF:

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ALSO PRESENT: Terry B. Eggers
Jason S. Revalee

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1 A Yes.
2 Q Do you own the company?
3 A Majority, yes.
4 Q Okay. What's the general corporate structure
5 of the company?
6 A It's privately held; myself and one other
7 shareholder.
8 Q Okay. And who's that other shareholder?
9 A David L. Smoot.
10 Q Okay. And if you would, tell me a little bit
11 about what type of railroad this is.
12 A This is a short-line railroad that
13 basically -- we operate from Greenville, Georgia, to
14 Bainbridge, Georgia; Smithville to White Oak, Alabama,
15 into Eufaula.
16 Q Okay. So just in the states of Georgia and
17 Alabama?
18 A Yes.
19 Q Okay. And it's a Georgia corporation; is
20 that --
21 A No. Delaware --
22 Q A Delaware --
23 A -- corporation.
24 Q -- corporation?
25 A Yes. Yes.

4

1 Q Okay. What -- what types of freight do you
2 haul?

3 A Of course, a wide variety, but the majority
4 being peanut and peanut by-products, clay pellets and
5 aggregate, and then -- a lot of other stuff, smaller
6 volume, and hazardous materials, plastics, wood, ag
7 products: you know, grain, corn, wheat.

8 Q Okay. What would you consider to be the
9 railroad's primary market? Like what -- who do you try
10 to get business from?

11 A It's more a regional thing. Wherever your
12 footprint is you try to get business from anybody
13 that's going to have a bulk commodity that will ship.

14 Q Okay.

15 A So it's not a commodity group as much as a
16 territorial thing. Railroads, you're limited to
17 operating on your footprint, so anyone that would ship
18 or receive a bulk commodity within our footprint.

19 Q Okay. Who are some of your representative
20 clients?

21 A Are you asking who our customers are?

22 Q Yes.

23 A Golden Peanut would be one of the larger
24 ones.

25 Q Are they here in Georgia?

1 there.

2 Q Okay. How about the maintenance of the track
3 from the time that it was built until now?

4 A The -- well, from the time it was built, you
5 know, we could not speak on that.

6 Q Okay.

7 A But in terms of, you know, the last, you
8 know, five or six years, then, of course --

9 Q Okay.

10 A -- within that.

11 Q Let me ask you: How long has Georgia
12 Southwest Railroad owned that particular track?

13 A Well, technically, Georgia Southwestern does
14 not own that piece of track.

15 Q Okay. Who owns it?

16 A The Georgia Southwest Corporation, who then,
17 in turn, leases it to the Norfolk Southern.

18 Q Okay.

19 A Who then, in turn, leases it to the Georgia
20 Southwestern Railroad, who then we have the maintenance
21 responsibility.

22 Q Okay. So explain that to me one more time.
23 Who actually owns it?

24 A Georgia Southwest Corporation.

25 Q Okay. Who are they? Are they affiliated

1 A Yes.

2 Q Okay.

3 A And Alabama. Carbo (phonetic) Ceramics in
4 Eufaula to Cinderlo Curly (phonetic); they're bulk in
5 materials that are primarily -- I mean, they're on the
6 Georgia side, but -- and then we get into, you know, a
7 lot smaller ones.

8 Q Okay. And is this a Class I railroad?

9 A No.

10 Q What classification --

11 A Class III.

12 Q Class III? Okay. And generally, what does
13 that mean?

14 A That we have less than \$22 million of gross
15 revenue annually.

16 Q Okay. And just a few general questions about
17 who's going to be the most knowledgeable about what
18 areas. And Adrian's already given me some information
19 on this, but who would know the most about the use of
20 the track prior to the incident that we're here on
21 today?

22 A As far as use, it -- really, any -- myself,
23 Dave, or Jason.

24 Q Okay.

25 A And Terry would know what usage had been out

1 with y'all?

2 A No. And they're one of the -- they're one of
3 the companies involved with Norfolk Southern.

4 Q Okay. So that's a --

5 A For practical purposes, Norfolk Southern
6 Companies own it and lease it to the Georgia
7 Southwestern Railroad, Inc.

8 Q Okay. So basically, y'all are responsible
9 for the maintenance of the --

10 A Yes.

11 Q -- railway?

12 A Yes.

13 Q Okay. Is that part of your lease
14 agreement --

15 A Yes.

16 Q -- with them?

17 Do you have a written lease with them?

18 A Yes.

19 Q Okay. What are the general terms of that
20 lease?

21 A In regards to what?

22 Q Use, maintenance, how long the lease is, what
23 it's for, what the lease is for.

24 A The lease is for the purpose of the Georgia
25 Southwestern Railroad Company to provide common carrier

1 Q Yes, sir.
 2 A No.
 3 Q Okay. Did anybody from your office go there
 4 on a regular basis?
 5 A Just on a required basis.
 6 Q Okay. So just whenever they were required to
 7 inspect the track? Would that be fair to say?
 8 A You said anyone, so --
 9 Q Anybody from the office.
 10 A You mean the company?
 11 Q Yes, sir.
 12 A Yeah. It would be on a required basis.
 13 Q Okay. And would you dispute that there was
 14 any vegetation growing on the trestle prior to the
 15 fire?
 16 A No.
 17 Q Would you dispute that the presence of
 18 vegetation -- this was in the winter. This fire
 19 occurred in the winter. We all know most vegetation
 20 dies in the winter. Would you dispute that that could
 21 cause problems if fire were present around that
 22 vegetation? That's a bad question.
 23 Q Would you dispute that that could add fuel to
 24 a fire? That the vegetation, the dead vegetation,
 25 could add fuel to a fire?

1 were going to catch on fire?
 2 A Well, how would you define -- well, first of
 3 all, in this context, a tree is dead vegetation.
 4 Q Sure.
 5 A The bridge is made of dead vegetation, so
 6 having more dead vegetation, would that increase or
 7 decrease the likelihood? I don't know that it would.
 8 It might change the size of your fire.
 9 Q Okay. Do you claim that Mr. Mitchell had any
 10 responsibility to keep the area around the trestle
 11 clear of debris or vegetation?
 12 A No.
 13 Q Okay. Do you agree that that was the
 14 railroad's responsibility?
 15 A No.
 16 Q Whose responsibility is it?
 17 A I don't know that it's anyone's.
 18 Q So you could just let trees grow up on the
 19 railroad track and the railroad trestle?
 20 A You could not let trees grow up -- what -- be
 21 more specific. Within what parameters?
 22 Q Just a tree in the middle of the track. I
 23 mean, you can't let that happen, can you?
 24 A No. You cannot have a tree in the gauge of
 25 the track.

1 A I believe what you're asking me is: Would
 2 vegetation -- dry vegetation be fuel for a fire?
 3 Q Right.
 4 A I believe that to be true.
 5 Q Okay. And if it's on the trestle, then that
 6 could be a contributing factor to the trestle catching
 7 on fire and becoming damaged?
 8 A No.
 9 Q You don't think that could be a contributing
 10 factor?
 11 A Just going along with your question, you
 12 know, to my knowledge, fire requires oxygen, fuel, and
 13 heat, and fuel by itself would not ignite.
 14 Q Okay. Would you say it would be less likely
 15 for the trestle to catch on fire if they were -- okay.
 16 Would it be more or less likely for the trestle to
 17 catch on fire, in your opinion, if it did not have
 18 vegetation growing on it?
 19 A Not necessarily, considering that the trestle
 20 is made out of the same material as dead vegetation.
 21 Q No. Would it be more or less likely in your
 22 opinion?
 23 A I think it would be the same.
 24 Q So you don't think that dead vegetation on
 25 wood could in any way add fuel to a fire if the wood

1 Q Okay. But, again, you don't claim that
 2 Mr. Mitchell had any responsibility to keep that away
 3 from the trestle?
 4 A Keep what away?
 5 Q Keep the vegetation off the railroad trestle.
 6 A No. He did not, no.
 7 Q Explain to me exactly what it is that you
 8 claim Mr. Mitchell did wrong in this case.
 9 A He let his fire get onto our property.
 10 Q Okay. And how do you know that that's what
 11 occurred?
 12 A Because he said it did.
 13 Q Okay. Tell me about all the conversations
 14 that you've had with Mr. Mitchell.
 15 A I believe that I've only had one phone
 16 conversation with him directly.
 17 Q Okay. What was said by you, and what was
 18 said by him?
 19 A I did not, you know, keep accurate notes at
 20 the time.
 21 Q Okay. But just from your recollection.
 22 A My recollection, it was the time just after
 23 this fire and --
 24 Q Okay.
 25 A -- I had a conversation with him in terms of